MOHD SHAH DAUD v. PENTADBIR TANAH DAN JAJAHAN KOTA BHARU

COURT OF APPEAL, PUTRAJAYA
PRASAD SANDOSHAM ABRAHAM JCA
ZAMANI A RAHIM JCA
MARY LIM JCA
[CIVIL APPEAL NO: D-01(A)-253-08-2015]
13 MAY 2016

LAND LAW: *Acquisition of land – Award of compensation – Appeal against – Whether decision of court on compensation final – Whether appeal maintainable – Whether there was attempt to circumvent intent of ss. 40D(3) & 49(1) of Land Acquisition Act 1960*

LAND LAW: *Acquisition of land – Award of compensation – Compulsory acquisition – Late payment charges on additional compensation – Claim for – Whether there must be adequate compensation for person deprived of his property not out of his own free choice – Federal Constitution, art. 13 – Whether claimant could be deprived of late payment charge on ground that he sought legal recourse – Land Acquisition Act 1960, s. 48*

The appellant owned three plots of lands that had been compulsorily acquired under the Land Acquisition Act 1960. The appellant sought compensation based on the value of land and buildings upon the lands. The land administrator awarded the appellant a total sum of RM163,567.82 as compensation based on the land value at RM53.82 per square metre ('smp'). There was no compensation for buildings and other items claimed by the appellant. Dissatisfied, the appellant filed a reference to the High Court. At the first hearing, the appellant claimed compensation of RM638.410 for the value of the three lots of land and a further RM378.145 for buildings and appurtenant. The High Court ordered an increase in compensation for the value of land from RM53.82 smp to RM90 smp but gave no award on the claim for the buildings. Dissatisfied, the appellant appealed. The Court of Appeal set aside the decision in the first hearing on the basis that it was made without the benefit of a proper trial and a re-hearing was ordered. At the second hearing, the High Court, *inter alia,* decided that (i) the value of all the three plots of lands to be increased to RM130 smp rendering the total compensation as RM395,200; (ii) costs of filling of RM114,000 was deducted from the compensation for the value of the lands; (iii) the appellant's claim for late payment charges of 8% per annum on the additional compensation from the date of acquisition was dismissed; and (iv) the appellant's claim for compensation of RM378,145 for the buildings on the lands was dismissed. The present appeal arose under the second proceedings and was only in respect of a part of that decision. The appellant was dissatisfied with the High Court Judge's decision on the matter of costs of filling, late payment charges and payment of costs to the respondent. Prior

to being compulsorily acquired, the appellants' lands were filled, levelled and buildings constructed thereon by Majlis Perbandaran Kota Bahru ('MPKB') without the appellant's permission. The appellant had filed a successful claim for trespass against MPKB. This filling and levelling of the appellant's lands had actually enhanced or increased the value of the appellant's lands. However, because the filling and levelling were unlawful, as were the buildings or stalls that were constructed thereupon, the appellant was therefore not entitled to compensation. It was thus the view of the High Court that the appellant could not claim double compensation by arguing on one hand that MPKB had unlawfully trespassed on his lands while on the other hand claiming for such works when the lands were compulsorily acquired. The High Court had also rejected the appellant's claim for payment of late payment charges on additional compensation on the basis that the delay of seven years in payment was occasioned by the appellant himself in opting to appeal against the order of the court. Hence, the present appeal against the High Court's decision. The respondent, on the other hand, argued that (i) the instant appeal was not maintainable by reason of ss. 40D and 49 of the Land Acquisition Act 1960 as the decision of the court on compensation was final and that there was no further appeal on such matters; and (ii) that it would be unfair to order the respondent to pay the late payment charges as the appeals process was outside the control of the respondent.

Held (allowing appeal in part)
Per Mary Lim JCA delivering the judgment of the court:

(1) Section 40D is very clear and effect must be given to the provision when it unambiguously expresses its intent. Herein, the matter of costs of filling and levelling was related directly to the amount of compensation. Indeed, it was caught by the operation of ss. 40D(3) and 49(1) and it would be highly irregular for this court to condone what was in fact an attempt to circumvent the clear intent of ss. 40D(3) and 49(1). The appellant's appeal on this first issue was without merit and was therefore dismissed. (para 29)

(2) Land is immovable property protected under art. 13 of the Federal Constitution. Article 13 is quite emphatic in pronouncing that no person is to be deprived of his property save as in accordance with law. The law on compulsory acquisitions is governed by the Land Acquisition Act 1960. Where a person has been deprived of his property not out of his own free choice, there must be adequate compensation paid for that property. (paras 33 & 34)

(3) The imposition of late payment charges does not arise by reason of delay. It in fact arises only where the court is of the opinion that the sum which the Land Administrator ought to have awarded is in excess of the sum which the Land Administrator did or actually awarded. Where

upon hearing of the evidence at the reference the court awards a value which was higher or more than that awarded by the Land Administrator, the court may order the Land Administrator to pay the late payment charges on the excess or the extra sum ordered to be paid. This order was only available where the reference results in an increase in the award of compensation, and not otherwise. Such payment ensures that the compensation paid remains adequate as the landowner or persons interested is only paid compensation based on land values at a date that is long passed by the time the acquisition proceedings are completed. (para 35)

(4) It was wrong to deprive a claimant of this late payment charge simply on the ground that the claimant was seeking legal recourse. The issue of going to court to pursue a challenge on the award of compensation and thereby the time taken to dispose such a challenge was irrelevant to a consideration under s. 48. It is implicit within s. 48 itself that one has to go to court so that an order under the section may be made. Where the sum that the court grants in a land reference is in excess of the sum awarded by the Land Administrator, the court is vested with discretion to order a late payment charge. That late payment charge is levied at a rate of 8% per annum from the date of possession of the land to the date of payment of such excess. (para 36 & 37)

Bahasa Malaysia *Headnotes*

Perayu memiliki tiga bidang tanah yang diambil secara paksa di bawah Akta Pengambilan Tanah 1960. Perayu menuntut ganti rugi berdasarkan nilai tanah dan bangunan atas tanah. Pentadbir tanah mengawardkan perayu wang sejumlah RM163,567.82 sebagai ganti rugi berdasarkan nilai tanah pada RM53.82 satu meter persegi ('smp'). Tiada ganti rugi diberikan untuk bangunan dan item-item lain seperti yang dituntut oleh perayu. Tidak berpuas hati, perayu memfailkan rujukan kepada Mahkamah Tinggi. Selepas perbicaraan pertama, perayu menuntut ganti rugi sebanyak RM638.410 bagi nilai tiga bidang tanah dan RM378.145 untuk bangunan dan yang berkaitan. Mahkamah Tinggi memerintahkan peningkatan dalam ganti rugi bagi nilai tanah dari RM53.82 smp ke RM990 smp tetapi tidak memberikan award untuk bangunan-bangunan yang dituntut. Tidak berpuas hati, perayu merayu. Mahkamah Rayuan mengetepikan keputusan perbicaraan pertama atas alasan bahawa ia dibuat tanpa manfaat perbicaraan yang betul dan satu perbicaraan semula diperintahkan. Pada perbicaraan kedua, Mahkamah Tinggi, antara lain, memutuskan bahawa (i) nilai ketiga-tiga bidang tanah ditingkatkan kepada RM130 smp menjadikan jumlah ganti rugi sebagai RM395,200; (ii) kos pengisian RM114,000 ditolak daripada ganti rugi bagi nilai tanah; (iii) tuntutan perayu untuk caj pembayaran lewat 8% setiap tahun atas ganti rugi tambahan dari tarikh pengambilan ditolak; dan (iv) tuntutan perayu untuk ganti rugi RM378,145 untuk bangunan-bangunan yang terletak di atas tanah

ditolak. Rayuan ini berbangkit di bawah prosiding kedua dan hanya berkenaan sebahagian keputusan yang diberikan. Perayu tidak berpuas hati dengan keputusan Hakim Mahkamah Tinggi berkenaan kos pengisian, caj pembayaran lewat dan bayaran kos kepada responden. Sebelum tanah tersebut diambil secara paksa, tanah-tanah tersebut diisikan, diratakan dan bangunan dibina di atasnya oleh Majlis Perbandaran Kota Bahru ('MPKB') tanpa kebenaran perayu. Perayu berjaya memfailkan tuntutan menceroboh terhadap MPKB. Pengisian dan perataan tanah-tanah perayu meningkatkan nilai tanah-tanah perayu. Walau bagaimanapun, oleh kerana pengisian dan perataan tidak mengikut undang-undang, begitu juga bangunan-bangunan dan gerai-gerai yang dibina, perayu tidak mempunyai hak mendapatkan ganti rugi. Mahkamah Tinggi memutuskan bahawa perayu tidak boleh menuntut ganti rugi dua kali dengan menghujahkan bahawa MPKB mencerobohi tanah-tanahnya, tetapi pada waktu yang sama menuntut untuk kerja-kerja yang dilakukan apabila tanah-tanah diambil secara paksa. Mahkamah Tinggi juga menolak tuntutan perayu untuk caj pembayaran lewat atas ganti rugi tambahan kerana kelewatan bayaran selama tujuh tahun disebabkan oleh perayu sendiri apabila dia memilih untuk membuat rayuan terhadap perintah mahkamah. Oleh itu, rayuan ini terhadap keputusan Mahkamah Tinggi. Disebaliknya, responden pula menghujahkan bahawa (i) rayuan ini tidak boleh dikekalkan berasaskan ss. 40D dan 49 Akta Pengambilan Tanah 1960 kerana keputusan mahkamah berkenaan ganti rugi adalah muktamad dan tidak sepatutnya ada rayuan seterusnya berkenaan perkara-perkara tersebut; dan (ii) adalah tidak adil untuk memerintahkan responden membayar caj bayaran lewat kerana proses rayuan adalah di luar kawalan responden.

Diputuskan (membenarkan sebahagian rayuan)
Oleh Mary Lim HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 40D sangat jelas dan kesan harus diberikan kepada peruntukan yang secara jelas mengambarkan niatnya. Di sini, perkara kos pengisian dan perataan secara langsung berkaitan dengan jumlah ganti rugi. Oleh itu, ia terangkum dalam operasi ss. 40D(3) dan 49(1) dan adalah tidak teratur untuk mahkamah ini membiarkan usaha untuk memintas maksud jelas ss. 40D(3) dan 49(1). Rayuan perayu berkenaan isu pertama ini adalah tanpa merit dan dengan itu ditolak.

(2) Tanah adalah harta tidak alih yang dilindungi oleh per. 13 Perlembagaan Persekutuan. Perkara 13 tegas dalam peruntukannya bahawa tiada seorang pun yang boleh dilucutkan harta bendanya kecuali mengikut undang-undang. Undang-undang berkenaan pengambilan secara paksa ditadbir oleh Akta Pengambilan Tanah 1960. Di mana seseorang dilucutkan harta bendanya bukan daripada pilihan bebasnya sendiri, harus ada pembayaran ganti rugi yang mencukupi bagi harta benda tersebut.

(3) Pengenaan caj pembayaran lewat tidak timbul oleh sebab kelewatan. Ia sebenarnya hanya timbul jika mahkamah berpendapat bahawa jumlah yang sepatutnya diawardkan oleh Pentadbir Tanah adalah lebih daripada jumlah yang diberikan oleh Pentadbir Tanah. Apabila keterangan dibicarakan semasa rujukan, mahkamah mengawardkan nilai yang lebih tinggi daripada apa yang diawardkan oleh Pentadbir Tanah, mahkamah boleh memerintahkan Pentadbir Tanah membayar caj pembayaran lewat atas jumlah tambahan atau lebihan yang diarahkan untuk dibayar. Dengan itu, perintah ini hanya boleh didapati di mana rujukan mengakibatkan peningkatan dalam award ganti rugi, dan bukan sebaliknya. Pembayaran sedemikian memastikan bahawa ganti rugi yang dibayar kekal mencukupi kerana pemilik hartanah atau pihak-pihak yang mempunyai kepentingan hanya dibayar ganti rugi berdasarkan nilai tanah pada tarikh yang lama berlalu pada masa prosiding pengambilalihan selesai.

(4) Adalah salah untuk menafikan pihak yang menuntut caj pembayaran lewat hanya atas alasan bahawa pemohon mengambil tindakan undang-undang. Isu ke mahkamah untuk membantah award ganti rugi dan masa yang diambil untuk melupuskan apa-apa bantahan tidak relevan bagi pertimbangan di bawah s. 48. Ia adalah tersirat dalam s. 48 sendiri bahawa seseorang harus ke mahkamah supaya perintah di bawah seksyen itu boleh dibuat. Di mana jumlah yang dibenarkan oleh mahkamah dalam rujukan tanah adalah lebih daripada jumlah yang diawardkan oleh Pentadbir Tanah, mahkamah diberi kuasa budi bicara untuk membuat perintah caj pembayaran lewat. Caj pembayaran lewat dikenakan pada kadar 8% setahun dari tarikh pemilikan tanah kepada tarikh pembayaran lebihan.

Case(s) referred to:

Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang [2011] 5 CLJ 125 FC ***(refd)***
Koriah Sudar v. Pentadbir Tanah Kuala Langat [2013] 5 CLJ 571 CA ***(refd)***
Sin Yee Estate Sdn Bhd v. Pentadbir Tanah Daerah Kinta [2005] 4 CLJ 653 FC ***(refd)***
Syed Hussain Syed Junid & Ors v. Pentadbir Tanah Negeri Perlis [2013] 9 CLJ 152 FC ***(refd)***
United Malacca Bhd v. Pentadbir Tanah Daerah Alor Gajah & Other Applications [2002] 4 CLJ 177 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13
Land Acquisition Act 1960, ss. 9A, 40D(3), 48, 49(1), First Schedule para. 1(2BA), (3)(b)

For the appellant - Mohd Syukran Mohd Noordin; M/s Syukran Noordin
For the respondent - Azizan Abdullah; State Legal Advisor's Office, Kelantan

[Editor's note: Appeal from High Court, Kota Bharu; Land Reference No: 15-57-2008 (overruled in part).]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Mary Lim JCA:

B **[1]** This appeal deals with two central issues, one of which is a very narrow issue concerning the exercise of discretion by the learned trial judge on the matter of late payment charges under the Land Acquisition Act 1960 (Act 486). The court below had refused to award such payment after an increase in compensation was awarded on the ground that the delay in payment was because the appellant had chosen to challenge the award.

C **[2]** Upon due consideration of the arguments on the law and on the facts, we unanimously allowed the appeal on this specific issue. These are our reasons in full.

Salient Facts

D **[3]** On 10 April 2008, portions of three plots of lands belonging to the appellant were compulsorily acquired under the Land Acquisition Act 1960 (Act 486) in order to build "Pasar Awam Mukim Pauh Daerah Panji Jajahan Kota Bahru". The appellant sought compensation based on value of land and buildings upon the lands.

E **[4]** The Land Administrator awarded the appellant a total sum of RM163,567.82 as compensation based on land value at RM53.82 per square metre (smp). There was no compensation for buildings and other items claimed by the appellant.

F **[5]** The appellant was dissatisfied and filed a reference to court. This reference ended up being heard twice by the High Court. We shall refer to these proceedings respectively as the "first hearing" and the "second hearing".

[6] At the first hearing, the appellant claimed compensation of G RM638,410 for the value of the three lots of land and a further RM378,145 for buildings and appurtenant. On 5 April 2012, the High Court ordered an increase compensation for the value of land from RM53.82 smp to RM90 smp but gave no award on the claim for the buildings. This award rendered the total compensation for the value of land as RM273,458, an extra H compensation of RM109,890. The appellant was dissatisfied and he appealed.

[7] On 17 June 2014, the Court of Appeal set aside the decision in the first hearing on the basis that it was made without the benefit of a proper trial. A rehearing was ordered. Both the original award of the Land Administrator I and that which was awarded under the first hearing were paid.

[8] At the second hearing on 1 July 2015, the High Court *inter alia* decided as follows:

i. the value of all three plots of lands is increased to RM130 smp rendering the total compensation as RM395,200;

ii. costs of fill of RM114,000 is deducted from the compensation for the value of the lands;

iii. the net amount of compensation is RM7,742.20 (RM395,200 - RM273,458 - RM114,000);

iv. the appellant's claim for late payment charges of 8% per annum on the additional compensation from the date of acquisition is dismissed;

v. the appellant's claim for compensation of RM378,145 for the buildings on the lands is dismissed; and

vi. the appellant to pay RM4,000 as costs to the respondent.

[9] The present appeal arises under the second proceedings. It is in respect of only a part of that decision. The appellant is dissatisfied with the learned High Court Judge's decision on the matter of costs of filling, late payment charges and payment of costs to the respondent. In the course of these proceedings before us, the appellant clarified that the appellant's real bone of contention is over the matter of the costs of filling and late payment charges.

Decision Of The High Court

[10] This is how the matter of the costs of filling and levelling arose and how it was dealt with by the High Court.

[11] Prior to being compulsorily acquired, the appellant's lands were filled, levelled and buildings (gerai-gerai) constructed thereon by Majlis Perbandaran Kota Bahru (MPKB) without the appellant's permission. Except for a small section of the appellant's lands, this filling and levelling of a depth of approximately 12 feet brought the appellant's lands to the same level as that of the road.

[12] The appellant filed a successful claim for trespass against MPKB. MPKB admitted liability and a consent judgment was recorded before the High Court on 4 April 2013. So, at the time of the acquisition and certainly by the time of the land reference proceedings, the appellant's lands were already filled, levelled and built on by MPKB, though unlawfully. This filling and levelling of the appellant's lands actually enhanced or increased the value of the appellant's lands. But, because the filling and levelling were unlawful, as were the buildings or gerai that were constructed thereupon, the appellant was therefore not entitled to compensation based as is provided under the First Schedule to Act 486. Furthermore, the costs of filling and levelling the lands were not incurred by the appellant, but by MPKB. Consequently, the learned judge ordered that such costs, a sum of

RM114,000 for all three lots, ought to be deducted from the compensation to be paid (this sum differs from that found in the sealed order of the court which reads a sum of RM117,632.20).

[13] It was the view of the court below that the appellant "tidak boleh mendapat manfaat berganda"; that the appellant cannot claim double compensation by arguing on the one hand that MPKB had unlawfully trespassed on his lands when it filled, levelled and built on his lands while on the other hand, claiming for such works when the lands are compulsorily acquired. In short, the High Court decided that the appellant was not entitled to compensation for value added or brought upon by third party such as MPKB. The sum of RM114,000 was thereby deducted from the compensation of RM395,200.

[14] The next main ground of discontent on the appellant's part is the application of s. 48 of the Land Acquisition Act. Under this provision, the court may order the payment of late payment charges on such additional compensation. The charges are based on 8% per annum and it may be granted from the date of when the Land Administrator took possession of the lands.

[15] This claim was rejected by the High Court on the basis that the delay of seven years in payment was occasioned by the appellant himself in opting to appeal against the order of the court – see para. 19 of the grounds of decision.

Submissions Of The Parties

[16] Learned counsel for the appellant argued that there was no basis for the High Court to make the deductions given that there was no evidence of such costs before the court.

[17] As for the late payment charges, the appellant submitted that the High Court gave just one reason when rejecting this claim: that it was because the appellant had opted to appeal against the decision of the court. Learned counsel contended that it was within the appellant's rights to pursue the appeal. Furthermore, the time taken to dispose the appeal was quite outside his control. As it was, this court ordered a retrial based on a mistrial. With that retrial, the appellant had to incur additional costs in conducting the reference all over again. In any case, this item of claim is provided for under the law. Therefore, it ought to have been allowed.

[18] The respondent's arguments focused on two central issues. The first being that the instant appeal was not maintainable by reason of ss. 40D and 49 of the Act 486. These provisions stipulate that the decision of the court on compensation is final and that there is no further appeal on such matters. Since both issues raised by the appellant concern compensation, we were urged to dismiss the appeal. The Federal Court's decisions in *Calamas Sdn*

Bhd v. Pentadbir Tanah Batang Padang [2011] 5 CLJ 125 and *Syed Hussain Syed Junid & Ors v. Pentadbir Tanah Negeri Perlis* [2013] 9 CLJ 152; [2013] MLJU 1018 were cited in support.

[19] The respondent's second submission turned on the interpretation of s. 48 itself; that the language is couched in permissive terms. Consequently, it was entirely a matter of discretion of the court, and in this case, discretion was exercised in the respondent's favour. The court found that the seven year delay was due to the appeal initiated by the appellant himself and not by the respondent. That appeals' process was also outside the control of the respondent. It would therefore be quite unfair to order the respondent to pay the late payment charges.

[20] Furthermore, it was submitted that if late payment charges were ordered to be paid from the date of possession of the lands, which is 15 September 2008, this would cause prejudice to the respondent. The respondent relied on yet another decision of the Federal Court; which is the decision in *Sin Yee Estate Sdn Bhd v. Pentadbir Tanah Daerah Kinta* [2005] 4 CLJ 653; [2006] 1 MLJ 12. In that case, the Federal Court took the view that where the delay is not the fault of the respondent, interest should not be allowed.

Our Decision

[21] As is required under the Land Acquisition Act 1960, the learned judge sat with two assessors and a proper hearing was conducted. On 1 July 2015, the court below made the following orders. First, the court allowed the appellant's claim for additional compensation. The additional amount allowed for all three lots added up to a sum of RM117,632.20. But, because the appellant had already received the amount of RM109,890 ordered to be paid in the first proceedings, the court ordered only the difference between the two sums to be paid. That effectively meant that the appellant was paid an additional amount of RM7,742.20.

[22] The court did not allow the appellant's other claims for costs of filling and levelling the land because these costs were incurred by the local authority and not by the appellant. Neither did the court award any additional compensation for the value of the buildings on the lands. Both these claims were disallowed because they arise from unlawfulness. MPKB had carried out those levelling works and constructed the buildings or gerai without the appellant's permission. These were unlawful acts of trespass as admitted by the local council in the civil suit brought by the appellant against the local council. The First Schedule to the Land Acquisition Act 1960, specifically para. 1(3)(b) provides that such illegal or unlawful use cannot be a basis for compensation.

[23] We do not see any distinction between this item of claim with that concerning the costs of filling and levelling the road. Both items relate quite directly to the appellant's claims for compensation. In this respect, ss. 40D(3) and 49(1) are clear in their resolve that the decision of the High Court is final and that there is no right of appeal for such matters. Section 40D(3) reads as follow:

> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

[24] Section 49(1) provides:

> Appeal from decision as to compensation
>
> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[25] Both provisions have been examined by the apex court. First, in the case of *Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang (supra)*. In that case, the complaint was that the High Court had ignored certain provisions of Act 486 including s. 9A and para. 1 (2BA) of the First Schedule to the Act when assessing the value of the scheduled land for purposes of compensation. The High Court had awarded compensation based on housing development potential, ignoring the fact that the land use of the acquired land was actually categorized as "agricultural." The Federal Court had agreed with the submissions of the appellant that with the amendments to Act 486, it was no longer permissible to value scheduled land on such basis. According to the Federal Court:

> To continue valuing compulsorily acquired land (which is zoned for a specific use) based on its potential is to negate the provisions of the aforesaid amendment and render them redundant.

[26] Be that as it may, the Federal Court noted that the appeal was really about the amount of compensation, whether the High Court was correct in determining the amount of compensation to the appellant. On that note, the Federal Court was unequivocal in dismissing the appeal expressing that:

> [19] Coming back to s. 40D(3) of the Act, I am of the view that the said section clearly stipulates that "Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.
>
> [20] It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal I do not see anything ambiguous in ss. 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order of compensation issued by the learned trial judge.

[27] In the second case of *Syed Hussain bin Syed Junid & Ors v. Pentadbir Tanah Negeri Perlis & Another (supra)* the Federal Court reiterated the approach taken in *Calamas Sdn Bhd*. The Federal Court opined that it had "… no reason to depart from the … view" expressed in *Calamas Sdn Bhd*. In this second case, the acquired lands were actually three lots held under one title. The Land Administrator had valued the lands separately attaching separate valuation to each of the three lots. The argument was that the lands ought to have been valued as a single entity and that would have yielded a value far higher than the three separate values. The Federal Court found that this argument of separate or single valuation was in fact considered by the High Court.

[28] Regardless, the Federal Court found that the appeal remained one that was against the amount of compensation awarded. In this respect, the Federal Court said:

> [24] … In our considered view, the appeal herein is nothing more than an attempt to circumvent the salient provisions of s. 40D and 49(1) of the Limitation Act which precludes any party from appealing against the award of compensation.

[29] The decision of this court in *Koriah Sudar v. Pentadbir Tanah Kuala Langat* [2013] 5 CLJ 571 which dismissed the appeal on quantum is of assistance. Once again, it was on the basis that s. 40D is very clear and effect must be given to the provision when it unambiguously expresses its intent. In the present appeal, we find that the matter of costs of filling and levelling relates directly to the amount of compensation. Indeed, it is caught by the operation of ss. 40D(3) and 49(1) and it would be highly irregular for this court to condone what is in fact an attempt to circumvent the clear intent of ss. 40D(3) and 49(1). The appellant's appeal on this first issue is without merit and is therefore dismissed.

[30] In relation to the issue of late payment charges, this is quite different. This claim is not caught by ss. 40D(3) and 49(1). This claim, sometimes referred to as a claim for interest, concerns the interpretation and application of s. 48 which reads as follows:

> 48. Land Administrator may be required to pay late payment charges
>
> If the sum which in the opinion of the Court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the Court may direct that the Land Administrator shall pay late payment charges on such excess at the rate of eight per cent per annum from the date on which the Land Administrator took possession of the land to the date of payment of such excess to the Court or to the person interested.

[31] In the facts of the instant case, it is not in dispute that the sum finally awarded in compensation was in excess of the sum which the Land Administrator did award as compensation. The appellant's argument is that

he should not have been deprived of this sum. He was merely pursuing his remedies under the law; and his pursuits have proved proper and fruitful as the Court of Appeal had ordered a retrial. It would therefore be quite wrong to deprive him of this sum. Both the appeal and the court process were furthermore outside his control.

[32] The respondent's arguments are the direct converse of these same arguments; that it was beyond their control and that they would be prejudiced if late payment charges were ordered.

[33] Having considered the arguments, the law and the facts, we agree with the appellant. Land is immovable property protected under art. 13 of the Federal Constitution. Article 13 is quite emphatic in pronouncing that no person is to be deprived of his property save as in accordance with law. The law on compulsory acquisitions is governed by the Land Acquisition Act 1960. Over the years, it has seen two amendments. The two amendments have not been substantive in changing its original effect and intent. In 1984, *vide* Land Acquisition (Amendment) Act 1984 (Act A575), the interest rate was amended from six to eight per cent. In 1997, *vide* Land Acquisition (Amendment) Act 1997 (Act A999), the words 'late payment charges' replaced the original term "interest". Save for these amendments, the intent to compensate for late payment with interest has always been there.

[34] It is easy to see why Parliament would have provided for such late payments; it is clearly consistent with the protection afforded under art. 13 of the Federal Constitution. Where a person has been deprived of his property not out his own free choice, there must be adequate compensation paid for that property. Generally, the adequacy of compensation is measured by reference to the market value of the property at the time of the acquisition. The further away one moves from that point of reference and determination, the closer one gets to concerns on the lawfulness of such acquisitions as the market values will differ over time. Hence, the substantial amendments to Act 486 *vide* the Land Acquisition (Amendment) Act 1997 [Act A999] which came into force with effect from 1 March 1998, to ensure that the hearing and making of acquisition awards are completed within a strict time frame of two years, failing which the acquisition will lapse.

[35] It is important to note that the imposition of late payment charges does not arise by reason of delay. It in fact arises only where the court is of the opinion that the sum which the Land Administrator ought to have awarded is in excess of the sum which the Land Administrator did or actually awarded. In other words, where upon hearing of the evidence at the reference, the court awards a value which is higher or more than that awarded by the Land Administrator, the court may order the Land Administrator to pay the late payment charges on the excess or the extra sum ordered to be paid. Thence, this order is only available where the reference

results in an increase in the award of compensation, and not otherwise. That charge of late payment is calculated at the rate of 8% per annum from the date of possession of the scheduled land. Such payment ensures that the compensation paid remains adequate as the landowner or persons interested is only paid compensation based on land values at a date that is long passed by the time the acquisition proceedings are completed.

[36] With respect to the learned High Court Judge, it is wrong to deprive a claimant of this late payment charge simply on the ground that the claimant is seeking legal recourse. In our view, the issue of going to court to pursue a challenge on the award of compensation and thereby the time taken to dispose such a challenge, is actually irrelevant to a consideration under s. 48. It is implicit within s. 48 itself that one has to go to court so that an order under the section may be made.

[37] Now, where the sum that the court grants in a land reference is in excess of the sum awarded by the Land Administrator, the court is vested with discretion to order a late payment charge. That late payment charge is levied at a rate of 8% per annum from the date of possession of the land to the date of payment of such excess.

[38] The above view and approach has strong resonance and support from the Federal Court's decision of *Sin Yee Estate v. Pentadbir Tanah Kinta (supra)*. In *Sin Yee Estate*, the learned Senior Federal Counsel had pointed out that there was an extraordinary delay as everyone had decided to wait the outcome of the case of *United Malacca Bhd v. Pentadbir Tanah Daerah Alor Gajah & Other Applications* [2002] 4 CLJ 177; [2003] 1 MLJ 465. This decision finally settled the dispute on the proper court to hear appeal cases on land acquisition matters before and after the establishment of the Court of Appeal on 24 June 1994 and the amendments to the Courts of Judicature Act 1964 as well as to Act 486.

[39] The Federal Court agreed with the argument of learned Senior Federal Counsel that the delay in the case was "beyond the control of the respondent." The Federal Court also accepted the submission that since the calculation of interest would be cumulative in nature, the amount of compensation allowed by the appeal together with the interest calculated from the date the Land Administrator took possession of the land "would be a severe double blow to the respondent as well as to the Government." Consequently, the Federal Court was "of the view that unless there are special reasons to the contrary, interest ordinarily should be granted to the claimant under this section as a matter of course unless there are some special reasons for disallowing it." The interest was finally disallowed because the court found that the delay was not the fault of the respondent.

[40] In the present appeal, the learned High Court Judge is quite clear on his reasons as to why this item was disallowed. It is because of the pursuit of legal remedies. This refers to the two sets of proceedings.

A **[41]** With respect, this reasoning for the refusal to exercise discretion is plainly erroneous. As we had pointed out earlier, it is implicit in s. 48 that it is the court that grants an order under s. 48. Going to court and being subjected to its rigours cannot be any reason to deny any claimant, especially a successful one, of rights afforded under statute. As pronounced by the B Federal Court, "interest ordinarily should be granted to the claimant under this section as a matter of course unless there are some special reasons for disallowing it."

[42] We cannot accept the reason suggested by the respondent as warranting deprivation or thwarting of that interest or late payment. It is C certainly, not a special reason or circumstance for disallowing the appellant's claim under s. 48.

[43] Accordingly, we unanimously allow the appeal in part and direct that the respondent do pay the appellant late payment charges on the excess at the rate of 8% per annum from the date of possession of the scheduled lands. We D further order no costs here and below and order that the deposit be refunded to the appellant.

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